TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 15

BURNS POE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF WASHINGTON

vs.

H. G. SEABORN

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED MAY 26, 1930

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vs.

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120613—30——1

1 In United States District Court for the Western District of Washington, Southern Division

No. 6965

H. G. SEABORN, PLAINTIFF

vs.

BURNS POE, COLLECTOR OF INTERNAL REVENUE, DEFENDANT

2 *Complaint*

Filed Aug. 25, 1928

Comes now H. G. Seaborn, plaintiff above named, and complaining of the said defendant, Burns Poe, for cause of action respectively alleges as follows:

I

That the said plaintiff is and was during all the times herein mentioned a citizen of the United States and of the State of Washington, and resides in Seattle, King County, Washington; that the defendant is and was during all the times herein mentioned the duly appointed, qualified and acting collector of internal revenue for the district of Washington, and resides in Tacoma, Pierce County, Washington, which is in the said southern division of the above-entitled court.

II

That all the acts on the part of said defendant herein complained of were done by him in his official capacity under instructions from his superior officers; that there was probable cause for his said acts and he is entitled to a certificate of probate cause in the event judgment is rendered against him herein.

III

That the plaintiff and his wife, Charlotte A. Seaborn, were married on December 11th, 1902; that the said plaintiff and his said wife have continuously since said date maintained the marriage relation, and have continuously lived in the State of Washington and have been citizens thereof since the 11th day of December, 1902.

3 That neither the plaintiff nor his said wife had any property at the date of their marriage and neither has since acquired any property by gift, devise, or descent.

IV

That by their joint efforts plaintiff and his said wife had accumulated, prior to the year 1927, a considerable amount of property, which consisted of real estate situated in the State of Washington,

stocks and bonds of various corporations, moneys and other personal property; that all of the property so accumulated, as plaintiff alleges and believes, was the community property of the plaintiff and his said wife under the laws of the State of Washington.

V

That in the year 1927 plaintiff was an officer and employe of the Skinner & Eddy Corporation, a Washington corporation, and devoted the major portion of his time to the affairs of said corporation, and in the year 1927 received as a salary for the services so rendered in that year the sum of fifteen thousand ($15,000.00) dollars.

VI

That in addition to the salary mentioned in the foregoing paragraph the plaintiff collected and received in the year 1927 the following income, revenue and profit from the community property aforesaid:

Interest on bank deposits, notes, and corporation bonds	$12,881.06
Dividends on stock of domestic corporations	8,834.57
Profit from the sale of real estate, stocks and bonds	606.59
Profit on sale of boat "Sea Gypsy"	500.00
Profit on Cities Service joint venture	625.95

4 That the sum of above-mentioned items, to wit: $38,448.17, constitutes all of the income received by either the plaintiff and/or his wife in the year 1927.

VII

That plaintiff paid from community funds for the year 1927 the following sums, which he alleges constitute allowable and proper deductions in the calculation of net income, under the Revenue Act of 1926:

Interest paid	$9,097.51
Taxes paid	782.26
Charitable contributions	1,716.68
Earnest money forfeited	250.00

In addition to the foregoing, plaintiff alleges that under revenue act of 1926 a further deduction of $325.00 for bad debts is allowable in the calculation of net income, making a total of allowable deductions of $12,171.45; that the foregoing items of expense and deduction, amounting to the sum of $12,171.45, constitute all of the expenses and deductions allowable to either the plaintiff or his wife in the year 1927.

VIII

That plaintiff and his wife each filed with the defendant herein, in the time required by law, income-tax returns for the year 1927, and made a faithful and bona fide effort to report their said income and

pay the income-tax liability thereon, as required by the revenue act of 1926. In so doing each made a return of one-half the entire amount of income so received as aforesaid, and each deducted therefrom one-half of the expenses and allowances above itemized
5 and each reported and returned, as net taxable income, one-half of the remaining sum. The gross income so returned and reported was $38,448.17; the total deductions and allowances so returned and reported was $12,171.45; leaving a balance of $25,276.72, of which each returned one-half, or $13,138.36 as their respective net incomes.

IX

That the tax liability of the plaintiff upon the income so reported by him at the rates provided by the revenue act of 1926, after giving effect to plaintiff's claim of personal exemption in the sum of $1,750.00 and plaintiff's claim to earned income in the sum of $7,500.00, was $152.38, which plaintiff paid in full at the time required by law. That the tax liability of plaintiff's said wife upon the income so reported by her at the rates provided by the revenue act of 1926, after giving effect to said wife's claim of personal exemption in the sum of $1,750.00 and her claim to earned income in the sum of $5,000.00, was the sum of $168.32, which said wife paid to the defendant at the time required by law.

X

That after the plaintiff had filed his income-tax return for the year 1927, as above set forth, said return was audited and examined by the Commissioner of Internal Revenue, who determined that the plaintiff's said tax was incorrect and that the tax liability shown thereon was insufficient in that, as determined by said Commissioner of Internal Revenue, all of said income, both that reported by plaintiff and that reported by his wife, should have been reported by the plaintiff and the tax calculated at the rates provided
6 for by the revenue act of 1926, upon a net income of $26,276.72 instead of two net incomes of $13,138.36 each. Said commissioner notified the plaintiff by registered mail of this determination, in accordance with section 274 of the revenue act of 1926, and that he proposed to assess against him a deficiency in income tax for the year 1927 on account thereof, amounting to $703.01.

XI

Plaintiff waived the opportunity afforded him to appeal from said determination to the United States Board of Tax Appeals and thereafter, on the 23rd day of August, 1928, the said sum, with interest in the sum of $17.92, a total of $720.93, was assessed against him by said commissioner and the assessment certified to defendant for collection, who thereupon made formal notice and demand upon the plaintiff for the payment of said sum.

XII

That the plaintiff paid to said defendant, on the 23rd day of August, 1928, the sum so demanded of him, and at the time of said payment protested in writing against the collection of said sum and notified the defendant that said sum was paid only to avoid the imposition of a penalty and interest and the seizure and sale of his property, which would result if the said sum was not paid. Thereafter the plaintiff filed with defendant a claim for the refunding of said sum, in the manner provided by law, which claim was based upon the facts and claims herein set forth, and which claim was rejected by the Commissioner of Internal Revenue on, to wit, the 24th day of August, 1928.

7 XIII

Plaintiff further alleges that all of the income so reported by him and his wife for the year 1927 was their community income and property under the laws of the State of Washington and belonging jointly and equally to them, and that he is not subject to taxation, under the revenue act of 1926, upon his said wife's one-half of said community income, and that the action of the Commissioner of Internal Revenue in adding to the income so reported by him the share of said community income received and reported by his wife is illegal and erroneous, and likewise that the assessment and collection of said additional sums as taxes and interest for the year 1927 is improper, illegal, erroneous, and contrary to the provisions of the revenue act of 1926.

XIV

That the effect and result of the acts of the defendant in demanding and collecting from him a tax upon his income plus the income of his wife is to levy and collect a tax upon something not within the meaning of the term "income," as it is used in the sixteenth amendment to the Constitution of the United States.

XV

That the exaction and collection of said tax is in violation of the third clause of section 2, and the fourth clause of section 9, of Article I of the Constitution of the United States.

XVI

8 That the exaction and collection of said additional tax is in violation of section 8 of Article I and in violation of the fifth amendment to the Constitution of the United States.

XVII

The revenue act of 1926, if by its terms it provides for and requires that the income from the property of plaintiff and Mrs. Seaborn be taxed in the manner and amount exacted of plaintiff by

the Commissioner of Internal Revenue, is, as to this plaintiff, unconstitutional and void in that—

(a) It requires the collection from plaintiff of a tax based in whole or in part upon the income of Mrs. Seaborn;

(b) It requires the collection from plaintiff at progressive rates of a tax based not upon his income alone, but upon the combined incomes of plaintiff and Mrs. Seaborn, thereby not only obliging plaintiff to pay upon an income not his own, but obliging him to pay at a higher rate upon his own income;

(c) It forbids and prohibits plaintiff and Mrs. Seaborn from filing separate income-tax returns, including therein the income only belonging to and received by them, respectively, which right is allowed under the revenue act to citizens of other States;

(d) It levies a direct tax upon the real estate and invested personal property owned by plaintiff and Mrs. Seaborn and the fruits and revenues therefrom, which direct tax is not upon income as the term is used in the sixteenth amendment to the Constitution, and which is not apportioned among the several States upon the basis of any census or enumeration, and it is also arbitrary and capricious in that it uses as a basis and as the subject of a tax assessed
9 against and collected from plaintiff at progressive rates the combined incomes of himself and Mrs. Seaborn instead of the income only of plaintiff;

(e) It provides for the taking of the property of the plaintiff without due process of law and denies to him the equal protection of the law, and in all of which respects and particulars, as well as in other respects and particulars, it violates the third clause of section 2, the first clause of section 8, the fourth clause of section 9, all of Article I of the Constitution of the United States, as well as the fifth and sixteenth amendments to the Constitution of the United States.

XVII

That by reason of the premises plaintiff is entitled to have and recover from the defendant the taxes and interest so paid, together with interest thereon, as provided by law.

Wherefore, plaintiff prays for the issuance of citation to the defendant, and that upon final hearing hereof he have judgment against defendant for the taxes and interest so paid, amounting to $720.93, together with interest thereon from the date of payment at the rate of six per cent per annum, and all costs of suit; that there be issued by the court a certificate of probable cause for the conduct of defendant in his official capacity as aforesaid, and that plaintiff have such other and further relief as he may be entitled to.

DONWORTH, TODD & HOLMAN,
Attorneys for Plaintiff.

10 [*Duly sworn to by H. G. Seaborn; jurat omitted in printing.*]

[File endorsement omitted.]

In United States District Court

Answer filed Sept. 14, 1928

Comes now the above-named defendant, Burns Poe, as collector of internal revenue, by his attorney, Anthony Savage, United States attorney for the western district of Washington, and for answer to the plaintiff's complaint herein, admits, denies, and alleges as follows:

11

I

Admits the allegations contained in Paragraphs I, II, and III of said complaint.

II

Denies each and every allegation contained in Paragraph IV of said complaint, except that it is admitted that prior to the year 1927 the plaintiff and his wife had accumulated a considerable amount of property, which consisted of real estate situated in the State of Washington, stocks and bonds of various corporations, moneys, and other personal property, and that all of said property so accumulated was community property under the laws of the State of Washington.

III

Admits the allegations contained in Paragraphs V, VI, VII, and VIII of said complaint.

IV

Denies each and every allegation contained in Paragraph IX of said complaint, except that it is admitted that the plaintiff, at the time of filing his income tax return for the year 1927, paid to the defendant a tax in the sum of $152.38, and that the plaintiff's wife, at the time of filing her return for the year 1927, paid to the defendant, as tax thereon, the sum of $168.32.

V

Admits the allegations contained in Paragraphs X, XI, and XII of plaintiff's complaint.

12

VI

Denies each and every allegation contained in Paragraphs XIII, XIV, XV, XVI, XVII, and XVIII of said complaint.

Wherefore, defendant prays that said action be dismissed, with costs.

ANTHONY SAVAGE,
United States Attorney, Counsel for Defendant.

[*Duly sworn to by Anthony Savage; jurat omitted in printing.*]

[Endorsed]: Received a copy of the within answer this 13th day of September, 1928.

DONWORTH, TODD & HOLMAN,
Attorneys for Plaintiff.

[File endorsement omitted.]

13 In United States District Court

Opinion filed May 17, 1929

Plaintiff sues to recover from the collector an amount paid by him under protest on account of 1927 income taxes. Plaintiff and his wife having made separate returns and payments for that year he was thereafter required to pay a sum sufficient, with the payments theretofore made by him and his wife, to equal the amount due provided plaintiff should, instead of such separate returns, have reported the whole as his income.

The case was tried to the court upon an agreed statement of facts. The following summary of such statement from plaintiff's brief shows with sufficient fullness and detail the question presented:

"The plaintiff, H. G. Seaborn, and Charlotte A. Seaborn, were married at Seattle, Washington, December 11, 1902, and since
14 said date have continuously maintained the marriage relationship, continuously lived in the State of Washington and been citizens and residents of said State. Neither the plaintiff nor his said wife had any property at the date of their marriage and neither has since acquired any property by gift, bequest, devise, descent, or inheritance, but they have accumulated a considerable amount of property in the State of Washington, consisting of real estate situated in said State, stocks, bonds, moneys, and other personal property, all of which was and is the community property of the plaintiff and his said wife, under the laws of the State of Washington.

"The entire income, in and for the year 1927, of the plaintiff and his wife, reported by them on their income tax returns filed for said year, was their community income under the laws of the State of Washington and was derived as follows:

1. Salary of plaintiff for the year 1927 as an officer and employee of the Skinner & Eddy Corporation, a Washington corporation	$15,000.00
2. Interest on bank deposits, notes and corporation bonds	12,881.06
3. Dividends on stock of domestic corporations	8,834.57
4. Profit from sale of real estate, stocks, and bonds	606.59
5. Profit on sale of boat "Sea Gypsy"	500.00
6. Profit on Cities Service joint venture	625.95
Total	38,448.17

15 "The plaintiff, H. G. Seaborn, and his said wife Charlotte A. Seaborn, made separate returns, under the revenue act of 1926, for their incomes for the year 1927, each of said returns setting forth, as the income of the spouse making the same, one-half of the full community income of the spouse for said year. Both plaintiff and said wife, at the time required by law, paid an income tax for the 1927 income, computed on said returns separately considered. Thereafter, the Commissioner of Internal Revenue assessed a tax for said year gainst the plaintiff H. G. Seaborn, including a surtax, computing and assessing the same on the basis and theory that the entire community income was assessable and taxable to the husband alone. The defendant collector gave the plaintiff husband a credit on said

new assessment for the sums already paid by the plaintiff, and his said wife, and demanded payment of the unpaid balance amounting, with interest, to the sum of $720.93. Plaintiff thereupon, under due protest, paid said additional tax so assessed, and after proper proceedings instituted this suit to recover the excess sum so paid by him over and above the amount of tax computed, assessed and paid on the basis of separate returns, as hereinabove stated."

Plaintiff and defendant each moved for judgment upon the stated facts.

Plaintiff cites: Opinions of the Attorney General, Feb. 26, 1921 (32 Op. 435); Opinions of the Attorney General, Sept. 10,
16 1920 (32 Op. 298); Opinions of the Attorney General, July 16, 1927; United States vs. Robbins, 269 U. S. 315; Revenue Act of 1926 (44 St. L. 9, Part 2); Opinions of the Attorney General, Aug. 24, 1920 (32 Op. 298); Treasury Decisions, Sept. 18, 1920 (T. D. 3071); Treasury Decisions, Mar. 3, 1921 (T. D. 3138); Revenue Act of 1921 (H. R. 8245); Revenue Act of 1921, as reported by Finance Committee of Senate; United States vs. Falk, 204 U. S. 143 (51 L. Ed. 411); United States vs. Crecedo Hermanos, 209 U. S. 337 (52 L. Ed. 821); Smietanka vs. First Tr. & Sav. Bank, 257 U. S. 602 (66 L. Ed. 391); Provost vs. United States, 269 U. S. 443 (70 L. Ed. 352); Cf. Act, 1861, U. S. St. L. 12, p. 309, Sess. 2, Ch. 45, Sec. 49; Act 1862, U. S. St. L. 12, p. 473, Sess. 2, Ch. 119, Sec. 90; Act 1864, U. S. St. L. 13, p. 281, Sess. 1, Ch. 173, Sec. 116; Act 1894, U. S. St. L. 28, p. 553, Sess. 2, Ch. 349, Sec. 27; Act 1913, 38 St. L. 114, Sec. 11a (1); Act 1916, 39 St. L. 756, Title I, Part I, Sec. 1 (a); Act 1917, 40 St. L. 300, Title I, Sec. 1; Act 1918, 40 St. L. 1057, Title II, Part II, Secs. 210 and 211; Act 1921, 42 St. L. 233, Title II, Part II, Secs. 210 and 211; Act 1924, 43 St. L. 264, Title II, Part II, Secs. 210 and 211; Act 1926, 44 St. L. 21, Title II, Part II, Secs. 210 and 211; Rennsaeler & S. R. Co. vs. Irwin, 249 Fed. 726; certiorari denied, 246 U. S. 671 (62 L. Ed. 931); West End Street Ry. Co. vs. Malloy, 246 Fed. 625; certiorari denied, 246 U. S. 671 (62 L. Ed. 931); Northern Ry. Co. vs. Lowe, 250 Fed. 856; United States vs. Western Union Telegraph Company, 19 Fed. (2) 157; Towne vs. Eisner, 242 Fed. 702 at 704; Mutual Benefit Life Insurance Co. vs. Har-
17 rold, 188 Fed. 199; affirmed, 201 Fed 918; Amer. Net & Twine Co. vs. Worthington, 141 U. S. 468 (35 L. Ed. 821); Benziger vs. United States, 192 U. S. 38 (48 L. Ed. 331); Eidman vs. Martinez, 184 U. S. 578 (46 L. Ed. 697); Gould vs. Gould, 245 U. S. 151 (62 L. Ed. 211); Ehwab vs. Doyle, 258 U. S. 539 (66 L. Ed. 747); Reinecke vs. Gardner, U. S. Sup. Ct. Adv. Op. No. 13, p. 502 (48 Sup. Ct. 472); Crocker vs. Maley, 249 U. S. 223 (63 L. Ed. 573); Scott vs. Western Pac. Co., 246 Fed. 545; United States vs. Coulby, 251 Fed. 982, 258 Fed. 27; United States vs. Field, 255 U. S. 257 (65 L. Ed. 617); Smietanka vs. First Tr. & Sav. Bank, 268 Fed. 230; Bek vs. Miller, 8 Fed. (2) 797 at 799; Bacon vs. Hopkins, 27 Fed. (2) 140; Norman De Vaux vs. Commissioner of Internal Revenue, U. S. Board of Tax

Appeals, Docket No. 13574, decided by the Board on November 14th, 1928; Hill vs. Young, 7 Wash. 33 (34 Pac. 144); Holyoke vs. Jackson, 3 Wash. Ter. 235 (3 Pac. 841); Mabie vs. Whitaker, 10 Wash. 656 (39 Pac. 172); Warburton vs. White, 176 U. S. 484 (44 L. Ed. 555); Ambrose vs. Moore, 46 Wash. 463 at 466 (90 Pac. 588); Schneider vs. Biberger, 76 Wash. 504, at 507 (136 Pac. 701); James vs. James, 51 Wash. 60 (97 Pac. 1113); Sec. 1342, Remington's Compiled Statutes of Washington, 1922; Warburton vs. White, 18 Wash. 511 (52 Pac. 233, 52 Pac. 532); Ahern vs. Ahern, 31 Wash. 334 (71 Pac. 1023); Stewart vs. Bank of Endicott, 82 Wash. 106 (143 Pac. 458); Remington's Compiled Statutes of Washington, 1922, sections 6892 and 6893; Crawford vs. Morris, 92 Wash. 288 (158 Pac. 957); Schramm vs. Steele, 97 Wash. 309 (166 Pac. 634); Olive Co. vs. Meek,
18 103 Wash. 467 (175 Pac. 33); Snyder vs. Stringer, 116 Wash. 131 (198 Pac. 733); Coles vs. McNamara, 131 Wash. 691 (230 Pac. 430); Peterson vs. Zimmerman, 142 Wash. 385 (253 Pac. 642); Spokane State Bank vs. Tilton, 132 Wash. 641 (233 Pac. 15); Marston vs. Rue, 92 Wash. 129 (159 Pac. 111); Parker vs. Parker, 121 Wash. 24 (207 Pac. 1062); McDonough vs. Craig, 10 Wash. 239 (38 Pac. 1034); Allen vs. Chambers, 18 Wash. 341 (51 Pac. 478); Brotton vs. Langert, 1 Wash. 73 (23 Pac. 688); Day vs. Henry, 81 Wash. 61 (142 Pac. 439); Wilson vs. Stone, 90 Wash. 365 (156 Pac. 12); Fielding vs. Ketler, 86 Wash. 194 (149 Pac. 667); Spinning vs. Allen, 10 Wash. 570 (39 Pac. 151); Hoover vs. Chambers, 3 Wash. Terr. 26 (13 Pac. 547); Kaufman vs. Perkins, 114 Wash. 40 (194 Pac. 602); Little & Smythe Mfg. Co. vs. Miller, 3 Wash. 480 (28 Pac. 1035); Article I of the Constitution of the United States, sections 2, 8, and 9; fifth and sixteenth amendments to the Constitution of the United States; McKay on Community Property, sec. 1265; 30 Corpus Juris 564, sec. 97; I. T. Bulletin, Jan. to June, 1924 (C. B. VII-I, page 112); Arnett vs. Reade, 220 U. S. 311 (55 L. Ed. 477); Buchser vs. Buchser, 231 U. S. 157 (58 L. Ed. 166); Remington's Compiled Statutes of Washington, 1922, Section 6906; Hector vs. Hector, 51 Wash. 434 (99 Pac. 13); Kimble vs. Kimble, 17 Wash. 75 (49 Pac. 216); State ex rel. Lloyd vs. Superior Court, 55 Wash. 347 (104 Pac. 771); revenue act of 1926, section 1212; Calvin Phillips vs. Bergman, 130 Wash. 346 (227 Pac. 321); Calvin Phillips vs. Langlow, 55
19 Wash. 385 (104 Pac. 610); Horton vs. Donohoe-Kelly Bank, 15 Wash. 536 (46 Pac. 409); Shuey vs. Holmes, 22 Wash. 193 (60 Pac. 402); Donohoe-Kelly Banking Company vs. Puget Sound Bank, 13 Wash. 407 at 409; Rucker vs. Blair, No. 5662, Ninth Circuit Court of Appeals, decided April 1, 1929.

Defendant cites: Revenue act of 1926 (44 St. L. 9, Part 2); United States vs. Robbins, 269 U. S. 312; Civil Code of California, sec. 1401; Revised Laws of Nevada, sec. 2164; New Mexico Code of 1915, sec. 1840; Garrozi vs. Gastas, 204 U. S. 64; Daniel vs. Daniel, 181 Pac. 215; Merriman vs. Patrick, 174 Pac. 641; Richmond Screw and Anchor Company vs. United States, — U. S. —; United States vs. Title Insurance & Trust Company, 265 U. S. 472 at 486; McKay

on Community Property, section 1255; McAlpine vs. Kohler & Chase, 96 Wash. 146 (164 Pac. 755); Litzell vs. Hart, 96 Wash. 471 (165 Pac. 393); Potter vs. Couch, etc., 141 U. S. 296; Shorett vs. Signor, 107 Pac. 1033; Ostheller vs. R. Co., 182 Pac. 630; Katz vs. Judd, 185 Pac. 613; Holyoke vs. Jackson, 3 Wash. Ter. 235 (3 Pac. 841); Marston vs. Rue, 92 Wash. 129 (159 Pac. 634); Civil Code of California, sections 162, 163, 164, and 167; Remington's Compiled Statutes of Washington, 1922, sections 6890, 6891, 6892, and 6893; Gage vs. Gage, 138 Pac. 886; Barton vs. Southern Pacific Company, 63 Pac. 516; Remington's Compiled Statutes of Washington, 1922, sections 6895, 6896, and 6897; Civil Code of California, sections 168, 169, 172, and 173; Statutes of California, 1914, page 537; Remington's Compiled Statutes of Washington, section 7596; Remington's Compiled Statutes of Washington, 1922, sec. 10, 577; Schramm vs. Steele, 166 Pac. 634; Farmers, etc. Bank vs. Drew, 192 Pac. 105; Remington's Compiled Statutes of Washington, 1922, sections 1342 and 1419; Civil Code of California, sections 1401 and 1402; Remington's Compiled Statutes of Washington, 1922, section 989; Civil Code of California, section 146; Ritzville First National Bank vs. Cunningham, 130 Pac. 1148; Smietanka vs. First Trust & Savings Bank, 257 U. S. 602; revenue act of 1913 (38 St. L. 114); McKay on Community Property, sections 835 to 840, inclusive; Rucker vs. Blair, No. 5662, Ninth Circuit Court of Appeals, decided April 1, 1929; Allen vs. Commissioner of Internal Revenue, U. S. Board of Tax Appeals, No. 19438; revenue act of 1928.

CUSHMAN, District Judge:

The case was submitted to the court before the decision of the Circuit Court of Appeals for this circuit in the cases of Rucker vs. Blair. Since such decision each party hereto has filed a further brief.

Section 210 (a) of the act of February 26, 1926 (Part 2, 44 Statutes at Large, page 21) provides:

"Sec. 210. (a) In lieu of the tax imposed by section 210 of the revenue act of 1924, there shall be levied, collected, and paid for each taxable year upon the net income of *every individual* (except as provided in subdivision (b) of this section) a normal tax of 5 per centum of the amount of the net income in excess of the credits provided in section 216, except that in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 1½ per centum, and upon the next $4,000 of such excess amount shall be 3 per centum; * * *" (Italics the court's.)

It is the defendant's contention that, under the laws of the State of Washington, so far as property and income are concerned, the marital community is an "individual" within the meaning of the above-quoted section in support of such contention, citing Holyoke vs. Jackson, 3 Wash. Ter. 235, and Marston vs. Rue, 92 Wash. 129.

The Circuit Court of Appeals for this circuit, in the cases of Rucker vs. Blair, 5662 and 5663, decided April 1, 1929, under the Revenue Act of 1918 (Part I, 40 Statutes at Large, page 1062) held that a separate return by the husband of his distributive share of community income for each of the years 1918 and 1919 was proper. In the opinion in the first of these cases the court said:

* * * * * * *

"The partnership return for 1918 exhibited a total distributive income of $95,699.27 divided equally between the two partners. Petitioner had no other income (except his compensation for personal services to the firm which is not in issue) and made his individual tax return for one-half only of his distributive share, upon the assumption that it was community income, and that therefore the other half was returnable by his wife.

Taking the view that the whole of his share was separate
22 property, the Commissioner made an assessment on that basis, and, by the order brought here for review, the Board of Tax Appeals affirmed the assessment.

"The question is whether such income was separate or community property.

"The pertinent State statutes are sections 6890, 6891, and 6892 of Remington's Compiled Statutes of Washington.

* * * * * * *

"6. The wife has during coverture as well as upon dissolution of the marriage a vested and definite interest and title in community property equal in all respects to the interest and title of her husband therein. Marston vs. Rue, 92 Wash. 129 (159 Pac. 111): Schramm vs. Steele, 97 Wash. 309 (166 Pac. 634); Huyvaertz vs. Roedtz, 105 Wash. 657 (178 Pac. 801). See also Opinion Attorney General March 3, 1921, T. D. 3138, 4 C. B. 238.

"And it is provided by section 1212 of the Revenue Act of 1926 (44 Stat. 9, 109) that 'income for any period before January 1, 1925, of a marital community in the income of which the wife has a vested interest as distinguished from an expectancy, shall be held to be correctly returned if returned by the spouse to whom the income belonged under the State law applicable to such marital community for such period.'

* * * * * * *

"Our conclusion is that the petitioner's distributive share
23 was community income and was properly returned as such. The order appealed from is therefore reversed."

In the last brief filed for the defendant it is said of this case:

"In the case of Rucker vs. Blair it was the position of the Government itself that the income involved in that suit was properly returned provided the court should determine that the income in fact was community income. No other tenable position was possible. In section 1212 Congress expressly provided that community income for *periods prior to January 1, 1925*, might be returned by husband

and wife separately. The Circuit Court in the Rucker case *reached the conclusion that the income was, in fact, community income.* This settled the entire controversy. There was no other issue." (Last italic the court's.)

The court in Rucker vs. Blair not only reached the conclusion that the income in question was community income, but held that in Washington—

"* * * the wife has during coverture * * * a vested and definite interest and title in community property equal in all respects to the interest and title of her husband therein."

It inescapably follows that the wife has such interest and title in the community income for the income upon its receipt is not different in any respect which touches the present question from other community property. If her interest and title vests during coverture it vests upon receipt of the income, and she is, for the purposes of her share of such income, the 'individual' of such statute.

"The judgment will be for the plaintiff as prayed, to be settled upon notice."

[File indorsement omitted.]

In United States District Court

Defendant's requested conclusions of law filed July 15, 1929

Pursuant to trial of the above-entitled cause before the court without a jury comes now the defendant and respectfully moves that the court adopt the following conclusions of law:

I

Under the law of the State of Washington a wife has no such interest in the community income as to require the allowance of a division of such income between her and her husband in making returns for federal income tax purposes or in computing the tax thereon.

II

The revenue act of 1926 does not permit or require a division of community income between husband and wife domiciled in the State of Washington for income tax purposes, but that act requires the husband, who under the laws of said State alone has the disposition of the fund (although he is restricted in the matter of gifts, etc.), to return the community income as a whole and to pay the Federal income tax computed on the income as a whole.

III

That the plaintiff is not entitled to recover in said action.

IV

That said case should be dismissed, and that defendant have judgment for his costs and disbursements therein.

Dated at ———, Washington, this —— day of July, 1929.

————, *Judge.*

The defendant's motion for approval of the foregoing conclusions of law is hereby denied, to which ruling defendant excepts and the same is hereby allowed as of July 8th, 1929.

EDWARD E. CUSHMAN, *Judge.*

Dated at Seattle, Washington, this 15th day of July, 1929.

Received a copy of the within proposed conclusions of law this — day of July, 1929.

GEORGE DONWORTH,
Of Attorneys for Plaintiff.

26 [File indorsement omitted.]

In United States District Court for the Western District of Washington, Southern Division

No. 6965

H. G. SEABORN, plaintiff, *vs.* BURNS POE, collector of internal revenue, defendant

Final judgment filed July 8, 1929

This cause heretofore came on for trial before the court, without the intervention of a jury, a jury trial having been waived, and the issues of fact in this cause having been submitted to the court without the intervention of a jury, by written stipulation made by the parties and filed with the clerk of this court in accordance with sections 649 and 700 of the United States Revised Statutes.

The court has heretofore on this day duly made and filed in this cause special findings of fact and conclusions of law, in pursuance of which plaintiff is entitled to judgment against the defendant as hereinafter set forth.

Wherefore, by reason of the law and the premises, it is
27 now by the court considered, ordered, and adjudged that the plaintiff, H. G. Seaborn, do have and recover of and from the defendant, Burns Poe, collector of internal revenue, the sum of seven hundred twenty and 93/100 dollars ($720.93), together with interest thereon according to law from the date of payment, namely, August 23, 1928, and also the costs of this suit to be taxed by the clerk and the amount of such costs to be inserted in this judgment, in the further sum of ——— dollars ($——).

The court hereby certifies that there was probable and reasonable cause for the act of the defendant, the collector of internal revenue, in demanding and collecting from the plaintiff the internal-revenue tax, for the refund of which this judgment is entered.

Done in open court this 8th day of July, 1929.

EDWARD E. CUSHMAN, *Judge*

[File indorsement omitted.]

In United States District Court

Notice of appeal filed July 15, 1929

To H. G. Seaborn, plaintiff, and George Donworth and Frank E. Holman, his attorneys:

You and each of you will please take notice that Burns Poe, defend-
ant in the above-entitled cause, hereby appeals to the United
28 States Circuit Court of Appeals for the Ninth Circuit from
the judgment, decree, and order entered in the above-entitled cause on the eighth day of July, 1929, and that the certified transcript of record will be filed in the said appellate court within thirty days after the filing of this notice.

ANTHONY SAVAGE,
United States Attorney.
JOHN T. MCCUTCHEON,
Ass't United States Attorney.
GEORGE G. WITTER,
Special Atty., Internal Revenue.
T. H. LEWIS,
Special Attorney, Internal Revenue.

Received a copy of the within notice of appeal this 15th day of July, 1929.

GEORGE DONWORTH,
Of Attorneys for Plaintiff.

In United States District Court

Petition for order of appeal filed July 15, 1929

The above-named defendant, Burns Poe, conceiving himself aggrieved by the judgment and decree filed and entered on the —— day of July, 1929, in the above-entitled cause, does hereby appeal
from said judgment and the whole thereof to the United States
29 Circuit Court of Appeals for the Ninth Judicial Circuit for
the reasons and upon the grounds specified in the assignment of errors filed herewith, and prays that this, his appeal, be allowed; that a citation issue as provided by law, and that a transcript of the record and proceedings in said cause, duly authenticated, may be sent

to the United States Circuit Court of Appeals for the Ninth Judicial Circuit at San Francisco.

Dated at ———, Washington, this —— day of July, 1929.

ANTHONY SAVAGE,
United States Attorney.
JOHN T. MCCUTCHEON,
Ass't United States Attorney.

[File indorsement omitted.]

Receipt of a copy of the above and foregoing petition is hereby acknowledged this 15th day of July, 1929.

GEORGE DONWORTH,
One of Attorneys for Plaintiff.

30 In United States District Court

Order allowing appeal filed July 15, 1929

Upon petition of Burns Poe, Collector of Internal Revenue of the United States for the District of Washington, defendant in the above-entitled cause

It is ordered that the appeal of said defendant from the judgment herein to the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby allowed.

Dated at Seattle, Washington, this 15th day of July, 1929.

EDWARD E. CUSHMAN, *Judge.*

[File indorsement omitted.]

Receipt of a copy of the above order is hereby acknowledged this 15th day of July, 1929.

GEORGE DONWORTH,
One of Attorneys for Plaintiff.

In United States District Court

Assignments of error filed July 15, 1929

Burns Poe, Collector of Internal Revenue of the United States for the District of Washington, defendant in the above-entitled cause,
31 by Anthony Savage, United States attorney for the Western District of Washington, and John T. McCutcheon, assistant United States attorney, having filed notice of appeal as provided by law that the defendant appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment made and entered in said cause against said defendant herein, now makes and files in support of said appeal the following assignments of error upon which he will rely for reversal of said judgment upon the said appeal, which said errors and each and every one of them are to the great detriment, injury, and prejudice of this defendant, and the said defendant says that in the records and proceedings upon the

hearing and determination thereof in the District Court of the United States for the Western District of Washington there are manifest errors in this, to wit:

I

That the court erred in making, finding, and entering its conclusions of law, and each and all of them, as follows:

Conclusion of law No. 1: The income referred to in the foregoing finding of fact, being community income of the plaintiff and of his wife, Charlotte A. Seaborn, was the income of both of said spouses, each spouse having, under the laws of the State of Washington, an equal vested title and interest of one-half of said income.

Conclusion of law No. 2: Said plaintiff and his said wife, Charlotte A. Seaborn, is and was each an individual within the meaning of section 210 (a) of the revenue act of February 26, 1926. (Part 2, 44 S. L. page 21.)

32 Conclusion of law No. 3: The income tax assessable and payable thereon, under the provisions of the revenue laws of the United States in force during the year 1927, imposed a tax upon plaintiff, H. G. Seaborn, as to only one half of said community income and imposed a tax upon plaintiff's said wife, Charlotte A. Seaborn, upon the other one half of said community income.

Conclusion of law No. 4: The assessment, imposition and collection of an additional income tax for said year 1927 upon and from said plaintiff, and which has been paid by plaintiff under protest as alleged in the complaint herein and as found by the court, was not authorized by law and was and is in excess of the requirements of law.

Conclusion of law No. 5: Plaintiff is entitled to recover the same from defendant.

The facts found by the court are not sufficient to support said conclusions, or any of them; to the conclusions of law found by the court, and to each and all of them, the defendant took timely exception herein.

II

That the court erred in making and entering judgment against the defendant and in favor of the plaintiff for the reasons that the facts found by the court are not sufficient to support said judgment; to which the defendant took timely exception herein.

III

That the court erred in denying defendant's motion for
33 judgment made at the trial of said cause for the reason that the evidence introduced in said cause was not sufficient to support a judgment for the plaintiff; to which the defendant took timely exception herein.

IV

That the court erred in declining to make and find the first conclusion of law requested by the defendant that under the law of the State of Washington the wife has no such interest in the community income as to require the allowance of the division of such income between her and her husband in making returns for Federal income-tax purposes or in computing the tax thereon, and the revenue act of 1926 does not permit or require such division, but requires the husband, who, under the laws of said State, alone has the disposition of the fund (although he is restricted in the matter of gifts, etc.) to return the community income as a whole, and to pay the Federal income tax computed on the income as a whole; to which refusal the defendant took timely exception herein.

V

That the court erred in refusing to make defendant's requested conclusions of law No. II; that the plaintiff is not entitled to recover in said action; to which refusal the defendant took timely exception herein.

VI

That the court erred in refusing to make defendant's requested conclusions of law No. III; that the said cause should be
34 dismissed, and the defendant have judgment for his costs and disbursements therein, to which refusal the defendant took timely exception herein.

ANTHONY SAVAGE,
United States Attorney.
JOHN T. MCCUTCHEON,
Assistant United States Attorney.
GEORGE G. WITTER,
Special Attorney Int. Revenue.

Received a copy of the within assignments of error this 15th day of July, 1929.

GEORGE DONWORTH,
Of Attorneys for Plaintiff.

[File indorsement omitted.]

In United States District Court

Bill of exceptions and order settling same

Be it remembered that the above-entitled cause came on to be heard before the Honorable Edward E. Cushman, judge of the above-entitled court, on the 14th day of December, 1928, plaintiff being represented by his attorneys, Mr. George Donworth and Mr. Frank E. Holman, and the defendant by his attorneys, Mr. John

T. McCutcheon, assistant United States attorney, and Mr. T. H. Lewis, jr., special counsel, Bureau of Internal Revenue; by a
35 stipulation in writing signed by the attorneys for both parties the intervention of a jury was waived.

Exception I

At the trial of the above-entitled cause there was introduced into evidence a stipulation and agreed statement of facts entered into between the plaintiff and the defendant, and no further evidence or testimony was offered in the trial of said cause. Said stipulation and agreed statement of facts is hereby expressly referred to and by this reference made a part of this bill of exceptions as fully as if incorporated word for word herein. At the conclusion of the hearing of said cause the defendant moved for judgment on the ground that the evidence introduced in said cause was insufficient to support a judgment for the plaintiff.

Thereafter, to wit, on May 17, 1929, the court handed down its memorandum decision finding the issues of said cause in favor of the plaintiff, and denying the defendant's said motion for judgment, to which the defendant duly excepted and said exception was allowed by the court.

Exception II

Thereafter, to wit, on the 8th day of July, 1929, the court made and entered its special findings of fact and conclusions of law in said cause. Reference is hereby expressly made to said findings of fact and conclusions of law, and by this reference the same are made a part of this bill of exceptions as fully as if incorporated word for word herein.

36 Exception III

Within the time allowed by the court the defendant took due exception to the conclusions of law made by the court and to each and all of said conclusions on the ground that the same were not supported by the findings of fact made by the court, which exception was by the court allowed.

Exception IV

After the conclusion of the hearing of said cause and within the time allowed by the court, the defendant submitted in writing to the court, after giving due notice to the plaintiff, the following conclusions of law and moved that the same be adopted by the court as its conclusions of law:

Conclusion of law No. 1 requested by defendant

Under the law of the State of Washington a wife has no such interest in the community income as to require the allowance of a division of such income between her and her husband in making returns for Federal income-tax purposes or in computing the tax thereon.

Conclusion of law No. 2 requested by defendant

The revenue act of 1926 does not permit or require a division of community income between husband and wife domiciled in the State of Washington for income-tax purposes, but that act requires the husband, who under the laws of said State alone has the disposition of the fund (although he is restricted in the matter of gifts, etc.), to return the community income as a whole and to pay the Federal income tax computed on the income as a whole.

37 Conclusion of law No. 3 requested by defendant

That the plaintiff is not entitled to recover in said action.

Conclusion of law No. 4 requested by defendant

That said case should be dismissed, and that defendant have judgment for his costs and disbursements therein.

The court denied said motion as to each and all of said conclusions of law so requested by defendant, whereupon the defendant duly excepted, and said exception was by the court allowed.

It is hereby certified that the foregoing proceedings were had upon the trial of this cause and that this bill of exceptions contains all the evidence, material matters, facts, and proceedings relative to or necessary to an understanding of the foregoing exceptions. The stipulation and agreed statement of facts and exhibits thereto attached, and the findings of fact and conclusions of law made by the court are by reference above and hereby made a part of this bill of exceptions.

It is further certified that the foregoing exceptions asked and taken by the defendant were allowed by the court, and this bill of exceptions was duly presented and filed within the time fixed by law and the orders of this court, and is by me fully allowed and signed this 15th day of July, 1929.

EDWARD E. CUSHMAN, *Judge.*

38 Receipt of a true copy of the above and foregoing bill of exceptions is hereby acknowledged this 15th day of July, 1929.

GEORGE DONWORTH,
One of Attorneys for Plaintiff.

In United States District Court

Findings of fact and conclusions of law by the court pursuant to trial without a jury, filed July 8, 1929

This cause heretofore came on for trial and was duly tried before the court and the undersigned judge thereof without a jury, a jury having been waived by due stipulation, in writing, signed by the attorneys for the respective parties and filed with the clerk of this

court pursuant to the provisions of sections 649 and 700 of the United States Revised Statutes.

At said trial there was submitted to the court a written agreed statement of facts. Pursuant to said trial and said agreed statement of facts the court does hereby find and determine the facts in said cause, as follows:

I

A. H. G. Seaborn, the plaintiff, at all times herein mentioned, has been, and is now, a citizen of the United States and of the State of Washington, residing in Seattle, King County, Washington, which is in the collection district for the collection of internal revenue of the United States known as the district of Washington.

39 B. Burns Poe, the defendant, is the duly appointed and qualified acting collector of internal revenue of the United States for the said district of Washington, and resides in Tacoma, Pierce County, Washington, which is in the said collection district of the United States known as the district of Washington.

C. King County and Pierce County, Washington, are both in the district for the collection of internal revenue of the United States known as the district of Washington, and also in the judicial district of the United States known as the western district of Washington, but King County is in the northern division and Pierce County in the southern division of said district.

D. The taxes and interest sued for in this proceeding were paid by the plaintiff to the defendant in his official capacity, and defendant's action in demanding and collecting the same was in accordance with instructions of his superior officers duly appointed, qualified and acting. The defendant, in so demanding and collecting such taxes and interest, had probable cause therefor, and, in the event of a decision in this case adverse to him, he is entitled to a certificate of probable cause.

E. The plaintiff and his wife, Charlotte A. Seaborn, were married on December 11, 1902, and since said time have continuously maintained the marriage relation, have ever since resided in the State of Washington, and the said Charlotte A. Seaborn has been throughout such period and is now a citizen of said State.

40 F. Neither the plaintiff nor his said wife, at the time of their marriage, had any property, or pecuniary rights and neither of them has since acquired any property or pecuniary rights by gift, bequest, devise, descent, or inheritance.

G. Plaintiff and his said wife, during and prior to the year 1927, accumulated a considerable amount of property in the State of Washington, consisting of real estate situated in said State, and of stocks, bonds, moneys, and other personal property, all of which was and is the community property of the pla'ntiff and his said wife under the laws of the State of Washington. The said stocks, bonds, moneys, and other personal property stood, during the period of

ownership, in the name of the pla'ntiff. The record title (as referred to in secs. 10577 and 10578 Rem. Comp. Stat. of Washington, 1922) to said real estate stood, during the period of ownership, in the name of the plaintiff, with no notice of claim of community interest filed of record, as permitted by sec. 10578 of Rem. Comp. Stat. of Washington, 1922. The income set forth in subdivisions 2, 3, 4, 5, and 6 of paragraph H next following was derived during the year 1927 from the said property hereinabove mentioned in this paragraph G.

H. The entire income in and for the year 1927 of plaintiff and/or wife and/or of the community, which was all of the income which was, under the revenue laws of the United States, required to be included in and returned as gross income, was as follows:

1. Salary of plaintiff for the year 1927 as an office and employee of the Skinner & Eddy Corporation, a Washington corporation	$15,000.00
2. Interest on bank deposits, notes, and corporation bonds	12,881.06
3. Dividends on stock of domestic corporations	8,834.57
4. Profit from sale of real estate, stocks, and bonds	606.59
5. Profit on sale of boat "Sea Gypsy"	500.00
6. Profit on Cities Service joint venture	625.95
Total	38,448.17

None of the aforesaid income was rents, issues, or profits from property or pecuniary rights owned by the husband before marriage or acquired by him afterwards by gift, bequest, devise, or descent or from property or pecuniary rights of the wife at the time of her marriage or afterwards acquired by gift, devise, or inheritance.

I. The plaintiff paid from the community funds for the year 1927 the following sums, which constitute allowable and proper deductions from gross income in the calculations of net income under the revenue act of 1926:

Interest paid	$9,097.51
Taxes paid	782.26
Charitable contributions	1,716.68
Earnest money forfeited	250.00
Bad debt allowance	325.00
Total allowable deductions	12,171.45

42 J. The plaintiff and his wife each filed with the defendant herein, within the time required by law, income-tax returns for the year 1927, and made a faithful and bona fide attempt to report their said income and pay the income-tax liability therein as required by the revenue act of 1926. The defendant was the proper collector with whom the same should be filed. The returns were on Form 1040, furnished to taxpayers by the Bureau of Internal Revenue. Copies of the returns filed by the plaintiff and his wife are hereto attached and made a part hereof, marked, respectively, Exhibits A and B. In each return there was included, under proper headings, one-half of the income above described, from which there was subtracted one-half of the deductions above itemized, leaving on each return a balance of $13,138.36 as their respective net incomes

before deducting personal exemption and earned income credit. The tax liability of the plaintiff upon the income so reported by him, at the rates provided by the revenue act of 1926, after giving effect to plaintiff's claim of personal exemption in the sum of $1,750.00 and plaintiff's claim to earned income in the sum of $7,500.00, was $152.38, which plaintiff paid in full at the time required by law; and the tax liability of plaintiff's said wife upon the income so reported by her, at the rates provided by the revenue act of 1926, after giving effect to said wife's claim of personal exemption in the sum of $1,750.00, and her claim to earned income in the sum of $5,000.00,
43 was the sum of $168.32, which said wife paid to the defendant at the time required by law. All of said income so reported by the plaintiff and his said wife in the year 1927 was their community income under the laws of the State of Washington. If plaintiff and his wife were entitled to divide income, less deductions, exemptions, and credits as above described, the plaintiff's return was correct and the tax liability of the plaintiff thereon was as stated on his return.

K. Upon auditing the aforesaid tax return of the plaintiff, the Commissioner of Internal Revenue determined that said return of the plaintiff was incorrect in that, according to the determination of the commissioner, the plaintiff should have reported all of said income and claimed all of said deductions, and the tax should have been computed and paid at the rates provided in the revenue act of 1926, upon a net income of $26,276.72, less the personal exemption and earned income credit provided by law, instead of upon two net incomes of one-half of said sum. Under such a theory the tax liability of the plaintiff for 1927 would be $703.01 in addition to the amount shown on said return, or a total of $855.39. Thereupon the Commissioner of Internal Revenue notified plaintiff of this determination in accordance with the provisions of section 274 of the revenue act of 1926, and afforded the plaintiff an opportunity to appeal from this determination to the United States Board of Tax Appeals. The plaintiff waived this right, without prejudice to the right to test the matter in the courts, and the commissioner thereupon assessed against the plaintiff, on the 23rd day of August, 1928, said
44 additional sum of $703.01 as a deficiency in income tax due by him for the year 1927, and interest in the sum of $17.92, or a total of $720.93. Said assessment was certified to the defendant, who, on the 23rd day of August, 1928, made formal notice and demand upon the plaintiff for the payment of the same.

L. The plaintiff thereafter, on the 23rd day of August, 1928, paid to the defendant the sum so demanded of him, and at the time of said payment protested, in writing, against the collection of said sum, notifying the defendant that the same was paid only to avoid the imposition of penalties, additional interest, and seizure and sale of property which would ensue if the demand had not been complied with.

M. On the 23rd day of August, 1928, the plaintiff filed with the defendant a claim for the refunding of said sum, a copy of which is hereto attached, made part hereof, and marked Exhibit C, which claim was rejected by the Commissioner of Internal Revenue on the 24th day of August, 1928, whereupon this suit was instituted.

N. The plaintiff has complied with all of the conditions precedent and other formal requirements of the statutes and rules relating to his right to institute and prosecute this suit in the manner and upon the grounds alleged in his pleadings, and all informalities have been waived. The defendant and other officers of the United States have complied with all formal requirements of the statutes and regulations in making the deficiency assessments, in collecting the same, and in rejecting plaintiff's claim for the refund.

II

Without limitation upon the power of this court or any
45 appellate court to take judicial notice, the court further finds that the records of the Congress of the United States disclose the following proceedings:

A-1. The revenue act of 1921, as introduced into the House of Representatives, as reported by the Ways and Means Committee of the House and as passed by the House, contained the following clause:

"Income received by any community shall be included in the gross income of the spouse having management and control of the community property."

2. The revenue act of 1921, as reported by the Finance Committee of the Senate, substituted for the above-quoted clause the following:

"Income received by any marital community shall be included in the gross income of the spouse having the management and control of the community property, and shall be taxed as the income of such spouse."

3. The Finance Committee, in making its report to the Senate, discussed the foregoing provisions as follows, at page 14 of the report:

"Under an opinion of the Attorney General residents of States having a community property law enjoy marked advantage over residents of other States. Income which in other States is taxed as a unit to the husband, is divided between husband and wife in States having community property laws, and surtaxes are correspondingly reduced. An amendment is added to this section designed
46 to restore uniformity of treatment by providing that income received by any marital community shall be included in the gross income of the spouse having the management and control of the community property, and shall be taxed as the income of such spouse."

4. The bill, as passed by the Senate, eliminated the clause above quoted and as finally enacted contained no specific reference to community income.

B–1. Committee print No. 1 of the revenue act of 1924, as introduced into the Sixty-eighth Congress and filed on December 17, 1923, was entitled as follows: "The Revenue Act of 1924, Containing Proposed Amendments to the Existing Law Suggested by the Secretary of the Treasury," and at page 58 of the bill there was included, described as new matter, the following provision:

"Income received by any marital community shall be included in the gross income of the spouse having the management and control of the community property, and shall be taxed as the income of such spouse."

2. The bill, as reported by the Ways and Means Committee of the House of Representatives, eliminated the foregoing clause and contained no reference to community income.

C–1. While the Senate was considering the revenue act of 1926, the following amendment of page 12 of the bill was offered by Senator Wesley M. Jones, of the State of Washington:

47 "The liability of any taxpayer under any internal revenue law shall be determined, unless such taxpayer otherwise consents or requests, in accordance with the Treasury Decisions, Opinions of the Attorney General, and regulations made by the commissioner or the Secretary, or by the commissioner with the approval of the Secretary, in force at the time his return was made, whether such return was made before or after the enactment of this act. As used in this subdivision, the term 'return' means, in the case of a return which has been amended, the return as finally amended."

2. On February 12, 1926, the Senate, without a record vote, adopted the foregoing amendment, the same appearing in the bill as adopted by the Senate as section 1213. In conference there was substituted for this provision a clause in the language of and which became section 1212 of the revenue act of 1926.

CONCLUSIONS OF LAW

And from the foregoing facts the court concludes as a matter of law (1) that the income referred to in the foregoing findings of fact, being community income of the plaintiff and of his wife, Charlotte A. Seaborn, was the income of both of said spouses, each spouse having, under the laws of the State of Washington, an equal vested title and interest of one-half of said income, and (2) that said plaintiff and his said wife, Charlotte A. Seaborn, is and was each an

individual within the meaning of section 210 (a) of the revenue act of February 26, 1926 (Part 2, 44 S. L., page 21), and 48

(3) that the income tax assessable and payable thereon, under the provisions of the revenue laws of the United States in force during the year 1927 imposed a tax upon plaintiff, H. G. Seaborn, as to only one-half of said community income and imposed a tax upon plaintiff's said wife, Charlotte A. Seaborn, upon the other one-half of said community income, and (4) that the assessment, imposition, and collection of an additional income tax for said year 1927 upon

and from said plaintiff, and which has been paid by plaintiff under protest as alleged in the complaint herein and as found by the court, was not authorized by law and was and is in excess of the requirements of law, and (5) plaintiff is entitled to recover the same from defendant.

Let judgment be entered accordingly.

Done in open court this 8th day of July, 1929.

EDWARD E. CUSHMAN, *Judge.*

49 EXHIBIT A TO COURT FINDINGS

[Copy]

Individual income-tax return for net incomes from salaries or wages of more than $5,000, or incomes, regardless of amount, from business, profession, rents, or sale of property for calendar year 1927

File this return with the collector of internal revenue for your district on or before March 15, 1928

(Print name and address plainly below)

H. G. Seaborn, 7th floor, Skinner Bldg., Seattle, Washington.

Occupation, profession, or business: Executive.

1. Are you a citizen or resident of the United States? Yes.

2. If you filed a return for 1926, to what collector's office was it sent? Tacoma, Wash.

3. Is this a joint return of husband and wife? No.

4. State name of husband or wife if a separate return was made and the collector's office where it was sent. Charlotte A. Seaborn, Tacoma, Wash.

5. Were you married and living with husband or wife on the last day of your taxable year? Yes.

6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? ———.

7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change. No.

8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? None.

Item and Instruction No.	Amount received	Expenses paid (Explain in Schedule F)		
INCOME				
1. Salaries, wages, commissions, etc. (State name and address of person from whom received): Skinner & Eddy Corporation, 7th Floor Skinner Bldg., Seattle, Washington	$15,000.00	½	$7,500.00	
2. Income from business or profession. (From Schedule A)	12,881.06	½	6,440.53	
3. Interest on bank deposits, notes, corporation bonds, etc. (except interest upon which a tax was paid at source)				
(a) Interest on tax-free covenant bonds upon which a tax was paid at source				
4. Income from partnerships. (State name and address)				
(a) Income from fiduciaries. (State name and address)				
5. Rents and royalties. (From Schedule B)				
6. Profit from sale of real estate, stocks, bonds, etc. (From Schedule C)	606.59	½	303.30	
7. Dividends on stock of domestic corporations	8,834.57	½	4,417.28	
8. Taxable interest on Libery bonds, etc. (From Schedule E)				
9. Other income (including dividends received on stock of foreign corporations). (State nature of income): (a) Cities Service Joint venture $625.95; (b) Sale of boat Sea Gypsy 500.00	1,125.95	½	562.98	
10. Total income in items 1 to 9				$19,224.09
DEDUCTIONS				
11. Interest paid	9,097.51	½	$4,548.76	
12. Taxes paid. (Explain in Schedule F)	782.26	½	391.13	
13. Losses by fire, storm, etc. (Explain in Table on page 2)				
14. Bad debts. (Explain in Schedule F)	325.00	½	162.50	
15. Contributions. (Explain in Schedule F)	1,716.68	½	858.34	
16. Other deductions authorized by law: Earnest money forfeited. (Explain in Schedule F)	250.00	½	125.00	
17. Total deductions in items 11 to 16				6,085.73
18. Net income (item 10 minus item 17)				13,138.36

COMPUTATION OF TAX (See Instruction 21)

19. Earned net income (not over $20,000)		$7,500.00
20. Less personal exemption and credit for dependents (see instruction 20)		1,750.00
21. Balance (item 19 minus 20)		5,750.00
22. Amount taxable at 1½% (not over the first $4,000 of Item 21)		4,000.00
23. Amount taxable at 3% (not over the second $4,000 of Item 21)		1,750.00
24. Amount taxable at 5% (balance over $8,000 of Item 21		
25. Normal tax (1½% of item 22)		60.00
26. Normal tax (3% of item 23)		52.50
27. Normal tax (5% of item 24)		
28. Surtax on item 19 (see instruction 21)		
29. Tax on earned net income (total of items 25, 26, 27, and 28)		112.50
30. Credit of 25% of item 29 (not over 25% of items 28, 42, 43, and 44)		28.13
31. Net income (item 18 above)		13,138.36
32. Less dividends (item 7 above)	$4,417.28	
33. Interest on Liberty Bonds, etc., (item 8)		
34. Personal exemption	1,750.00	
35. Credit for dependents		
36. Total of items 32, 33, 34, and 35		6,167.28
37. Balance (item 31 minus 36)		6,971.08
38. Amount taxable at 1½% (not over the first $4,000 of item 37)		4,000.00
39. Balance (item 37 minus 38)		2,971.08
40. Amount taxable at 3% (not over the second $4,000 of item 37)		2,971.08
41. Amount taxable at 5% (balance over $8,000 of item 37)		
42. Normal tax (1½% of item 38)		60.00
43. Normal tax (3% of item 40)		89.13
44. Normal tax (5% of item 41)		
45. Surtax on item 18 (see instruction 21)		31.38
46. Tax on net income (total of items 42, 43, 44, and 45)		180.51
47. Less credit of 25% of tax on earned net income (item 30)		28.13
48. Balance (item 46 minus 47)		152.38
49. Adjustment for capital gain or loss (12½% of column 9, schedule D)		
50. Total tax (total of or difference between items 48 and 49)		
51. Less income tax paid at source		
52. Income and profits taxes paid to a foreign country or U. S. possession		
53. Balance of tax (item 50 minus items 51 and 52)		152.38

50 SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, 15, AND 16

Bad debts—item 14:	
W. H. Logan	$125.00
Pettibone	200.00
	325.00
Contributions—item 15:	
Seattle Community Fund	750.00
St. Marks Cathedral	416.68
Orthopedic Hospital	275.00
American Red Cross	100.00
Hazel Mission	25.00
Missionary Sisters, Sacred Heart	150.00
	1,716.68

51 H. G. SEABORN

Schedule C.—Profit from sale real estate, stocks, bonds, etc.
Year 1927

	Date acquired	Amount received	Cost	Profit
Real estate:				
Lake Washington Shorelands	1927	$12,762.33	$5,761.41	$7,000.92
Bonds:				
Agricultural Mtg. Bank of Columbia	1927	4,849.00	4,875.00	[1] 26.00
American Toll Bridge	1925	5,050.00	4,875.00	175.00
Associated Gas & Electric	1927	4,875.00	4,787.50	87.50
Caldas, Dept. of	1926	9,686.50	9,775.00	[1] 88.50
Coos Bay Water Co	1926	4,950.00	4,887.50	62.50
Empire Gas & Fuel	1926	5,275.00	4,862.50	412.50
Inland Power & Light	1927	10,050.00	9,575.00	475.00
Int. Railways of Central Amer	1927	4,500.00	4,587.50	[1] 87.50
Montecatini	1927	4,843.75	4,825.00	18.75
Oklahoma Natural Gas Corp	1926	5,162.50	4,937.50	225.00
Serbs, Croats & Slovenes	1927	4,412.50	4,625.00	[1] 212.50
Stocks:				
Caterpillar Tractor	1925	11,414.57	9,310.75	2,103.82
Central Gas & Electric	1926	4,812.50	4,787.50	25.00
Central Public Service	1927	991.75	500.00	491.75
Continental Gas & Electric	1925	5,100.00	3,875.00	1,225.00
East Bay Water Company	1926	9,875.00	9,587.50	287.50
Goodyear Tire & Rubber Co. of California	1927	4,030.00	3,890.00	140.00
Hawaiian & Commercial Sugar	1925	4,900.00	4,787.50	112.50
Indianapolis Power & Light	1927	9,850.00	9,800.00	50.00
Jersey Central Power & Light	1925	10,396.10	10,172.50	223.60
I. Magnin & Company	1927	1,423.50	1,250.00	173.50
Manhattan Railway	1925	8,200.00	8,685.00	[1] 485.00
Pacific Lighting Corporation	1927	10,614.00	9,587.50	1,026.50
Richfield Oil Common	1926	5,551.50	5,000.00	551.50
Sherman Clay & Company	1926–27	9,537.50	9,306.25	231.25
Safety Cable	1926	6,878.50	4,900.00	1,978.50
Zellerbach Corporation	1926	4,802.50	4,875.00	[1] 72.50
El Estado Products Company	1926	1.00	15,500.00	[1] 15,499.00
	.....	184,795.00	184,188.41	606.59

[1] Denotes loss.

52 EXHIBIT C TO COURT FINDINGS

CLAIM FOR REFUND OF TAXES ILLEGALLY COLLECTED

STATE OF WASHINGTON,
County of King, ss:

Exhibit C

Name of taxpayer or purchaser of stamps: H. G. Seaborn.
Residence (give street and number as well as city or town and State): 2240 Everett N., Seattle, Washington.
Business address: 7th Floor, Skinner Building, Seattle, Washington.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged: Employee of Skinner & Eddy Corporation and managing own affairs.
2. Character of assessment or tax: Income tax for year 1927.

Period: From Dec. 31st, 1926, to Dec. 31st, 1927

3. Amount: $855.39.
4. Reduction of tax liability requested (income and profits tax): $703.01.
5. Amount to be abated: $703.01 plus $17.92 interest: total, $720.93.
6. Amount to be refunded (or such greater amount as is legally refundable): $720.93.
7. Dates of payment (see collector's receipts or indorsements of canceled checks): Mar. 14, 1928, Pd. $152.38; Aug. 23, Pd. $720.93. (If statement covers income-tax liability, items 8–11, inclusive, must be answered.)
8. District in which return (if any) was filed: Tacoma, District of Washington.
9. District in which unpaid assessment appears: Tacoma, District of Washington.
10. Amount of overpayment claimed as credit: $720.93.
11. Unpaid assessment against which credit is asked; period from ——— to ———: $———.

Deponent verily believes that this application should be allowed for the following reasons:

Deponent and his wife, Charlotte A. Seaborn, both residents and citizens of the State of Washington, having a net community income for 1927 of $26,276.72, each filed separate returns for one-half of that amount, or $13,138.36; deponent's tax on his net income so returned, calculated under the rates provided by the revenue act of 1926, was $152.38, after allowing credit for his personal exemptions and earned

income as shown on his said return; this tax of $152.38 deponent paid to the collector March 14, 1928; thereafter the Commissioner of Internal Revenue determined that all of said community income should have been returned by deponent and deponent's tax calculated upon a net income of $26,276.72; whereupon, under instructions from said commissioner, said collector demanded of deponent an additional tax of $703.01, which deponent paid, under protest, August 23, 1928.

Deponent avers that he is not subject to taxation upon his wife's one-half of said community income; that the acts of the commissioner and the collector in adding to the income so reported by him the share of said community income received and reported by his wife and requiring him to pay an additional tax on that account were illegal, erroneous, contrary to the provisions of the revenue act of 1926, and contrary to the Constitution of the United States, and that said sum of $703.01 so exacted from him should be refunded, with interest.

Sworn to and subscribed before me this 23rd day of August, 1928.

(Signed) H. G. SEABORN.

[SEAL.] EUGENE C. LUCCOCK,
Notary Public.

52–53 EXHIBIT B TO COURT FINDINGS

Individual income-tax return for net incomes from salaries or wages of more than $5,000, or incomes, regardless of amount, from business, profession, rents, or sale of property, for calendar year 1927.

File this return with the collector of Internal Revenue for your district on or before March 15, 1928

(Print name and address plainly below)

Charlotte A. Seaborn, 7th floor, Skinner Bldg., Seattle, Wash.

1. Are you a citizen or resident of the United States? Yes.

2. If you filed a return for 1926, to what collector's office was it sent? Tacoma, Wash.

3. Is this a joint return of husband and wife? No.

4. State name of husband or wife if a separate return was made and the collector's office where it was sent. H. G. Seaborn, Tacoma, Wash.

5. Were you married and living with husband or wife on the last day of your taxable year? Yes.

6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? * * *

7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change. No.

8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? None.

Item and instruction No.	Amount received by H. G. Seaborn	Expenses paid (explain in Schedule F)		
INCOME				
1. Salaries, wages, commissions, etc. (State name and address of person from whom received)	$15,000.00	½	$7,500.00	
2. Income from business or profession. (From Schedule A)	12,881.06	½	6,440.53	
3. Interest on bank deposits, notes, corporation bonds, etc. (except interest upon which a tax was paid at source)				
(a) Interest on tax-free covenant bonds upon which a tax was paid at source				
4. Income from partnerships. (State name and address)				
(a) Income from fiduciaries. (State name and address)				
5. Rents and royalties. (From Schedule B)				
6. Profit from sale of real estate, stocks, bonds, etc. (From Schedule C)	606.59	½	303.29	
7. Dividends on stock of domestic corporations	8,834.57	½	4,417.29	
8. Taxable interest on Liberty bonds, etc. (From Schedule E)				
9. Other income (including dividends received on stock of foreign corporations). (State nature of income)	1,125.95	½	562.97	
(a)				
(b)				
10. Total income in items 1 to 9				$19,224.08
DEDUCTIONS				
11. Interest paid	9,097.51	½	4,548.75	
12. Taxes paid. (Explain in Schedule F)	782.26	½	391.13	
13. Losses by fire, storm, etc. (Explain in table on page 2)				
14. Bad debts. (Explain in Schedule F)	325.00	½	162.50	
15. Contributions. (Explain in Schedule F)	1,716.68	½	858.34	
16. Other deductions authorized by law. (Explain in Schedule F)	250.00	½	725.00	
17. Total deductions in items 11 to 16				6,085.72
18. Net income (item 10 minus item 17)				13,138.36

COMPUTATION OF TAX. (See Instruction 21)

19. Earned net income (not over $20,000)			$5,000.00
20. Less personal exemption and credit for dependents (see Instruction 20)			1,750.00
21. Balance (item 19 minus 20)			3,250.00
22. Amount taxable at 1½% (not over the first $4,000 of item 21)			3,250.00
23. Amount taxable at 3% (not over the second $4,000 of item 21)			
24. Amount taxable at 5% (balance over $8,000 of item 21)			
25. Normal tax (1½% of item 22)			48.75
26. Normal tax (3% of item 23)			
27. Normal tax (5% of item 24)			
28. Surtax on item 19 (see Instruction 21)			
29. Tax on earned net income (total of items 25, 26, 27, and 28)			48.75
30. Credit of 25% of item 29 (not over 25% of items 28, 42, 43, and 44)			12.19
31. Net income (item 18 above)			13,138.36
32. Less dividends (item 7 above)		$4,417.29	
33. Interest on Liberty bonds, etc. (item 8)			
34. Personal exemption		1,750.00	
35. Credit for dependents			
36. Total of items 32, 33, 34, and 35			6,167.29
37. Balance (item 31 minus 36)			6,971.07
38. Amount taxable at 1½% (not over the first $4,000 of item 37)			4,000.00
39. Balance (item 37 minus 38)			2,971.07
40. Amount taxable at 3% (not over the second $4,000 of item 37)			2,971.07
41. Amount taxable at 5% (balance over $8,000 of item 37)			
42. Normal tax (1½% of item 38)			60.00
43. Normal tax (3% of item 40)			89.13
44. Normal tax (5% of item 41)			
45. Surtax on item 18 (see Instruction 21)			31.38
46. Tax on net income (total of items 42, 43, 44, and 45)			180.51
47. Less credit of 25% of tax on earned net income (item 30)			12.19
48. Balance (item 46 minus 47)			168.32
49. Adjustment for capital gain or loss (12½% of column 9, Schedule D)			
50. Total tax (total of or difference between items 48 and 49)			
51. Less income tax paid at source			
52. Income and profits taxes paid to a foreign country or U. S. possession			
53. Balance of tax (item 50 minus items 51 and 52)			168.32

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue act of 1926, and the Regulations issued under authority thereof.

CHARLOTTE A. SEABORN.

Sworn to and subscribed before me this 13th day of March, 1928.

[NOTARIAL SEAL.] M. D. ARNQUIST.

54 SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, 15, AND 16

Bad debts—Item #14:	
W. H. Logan	125
Pettibone	200
	325
Contributions—Item #15:	
Seattle Community Fund	750.00
St. Marks Cathedral	416.68
Orthopedic Hospital	275.00
American Red Cross	100.00
Hazel Mission	25.00
Missionary Sisters Sacred Heart	150.00
	1,716.68

55 H. G. SEABORN

Schedule C.—Profit from sale real estate, stocks, bonds, etc., year 1927

	Date acquired	Amount received	Cost	Profit
Real estate:				
Lake Washington Shorelands	1927	$12,762.33	$5,761.41	$7,000.92
Bonds:				
Agricultural Mtg. Bank of Columbia	1927	4,849.00	4,875.00	[1] 26.00
American Toll Bridge	1925	5,050.00	4,875.00	175.00
Associated Gas & Electric	1927	4,875.00	4,787.50	87.50
Caldas, Dept. of	1926	9,686.50	9,775.00	[1] 88.50
Coos Bay Water Co.	1926	4,950.00	4,887.50	62.50
Empire Gas & Fuel	1926	5,275.00	4,862.50	412.50
Inland Power & Light	1927	10,050.00	9,575.00	475.00
International Railways of Central America	1927	4,500.00	4,587.50	[1] 87.50
Montecatini	1927	4,843.75	4,825.00	18.75
Oklahoma Natural Gas Corp	1926	5,162.50	4,937.50	225.00
Serbs, Croats & Slovenes	1927	4,412.50	4,625.00	[1] 212.50
Stocks:				
Caterpillar Tractor	1925	11,414.57	9,310.75	2,103.82
Central Gas & Electric	1926	4,812.50	4,787.50	25.00
Central Public Service	1927	991.75	500.00	491.75
Continental Gas & Electric	1925	5,100.00	3,875.00	1,225.00
East Bay Water Co.	1926	9,875.00	9,587.50	287.50
Goodyear Tire & Rubber Co. of California	1927	4,030.00	3,890.00	140.00
Hawaiian & Commercial Sugar	1925	4,900.00	4,787.50	112.50
Indianapolis Power & Light	1927	9,850.00	9,800.00	50.00
Jersey Central Power & Light	1925	10,396.10	10,172.50	223.60
I. Magnin & Company	1927	1,423.50	1,250.00	173.50
Manhattan Railway	1925	8,200.00	8,685.00	[1] 485.00
Pacific Lighting Corporation	1927	10,614.00	9,587.50	1,026.50
Richfield Oil Common	1926	5,551.50	5,000.00	551.50
Sherman Clay & Company	1926/27	9,537.50	9,306.25	231.25
Safety Cable	1926	6,876.50	4,900.00	1,978.50
Zellerbach Corporation	1926	4,802.50	4,875.00	[1] 72.50
El Estado Products Company	1926	1.00	15,500.00	[1] 15,499.00
		184,795.00	184,188.41	606.59

[1] Denotes loss.

57 MARCH 14, 1928.

COLLECTOR OF INTERNAL REVENUE,
Seattle, Washington.

DEAR SIR: I am enclosing herewith 127 return of income, Form 1040, for Charlotte A. Seaborn, together with check for $168.32, same being payment in full.

Will you please acknowledge receipt on the enclosed carbon of this letter.

Very truly yours,

E. G. McCOY,
Auditor.

EGMc/A

(Received: Collector of internal revenue, district of Washington, March 14, 1928, Seattle office.)

[File indorsement omitted.]

In United States District Court

Stipulation and agreed statement of facts

Filed Nov. 12, 1928

The parties hereto, by their undersigned attorneys of record duly authorized, hereby stipulate and agree, as follows:

I

58 That a jury trial is waived, and the issues of fact in this case may be tried and determined by the court without the intervention of a jury, in accordance with sections 649 and 700 of the United States Revised Statutes. (Secs. 773 and 875, U. S. C.)

II

It is agreed that the following is a true statement of the pertinent facts in this case, and the same shall be submitted thereon as an agreed statement of facts; that is to say:

A. H. G. Seaborn, the plaintiff, at all times herein mentioned has been, and is now, a citizen of the United States and of the State of Washington, and now resides in Seattle, King County, Washington, which is in the collection district for the collection of internal revenue of the United States known as the district of Washington.

B. Burns Poe, the defendant, is the duly appointed and qualified acting collector of internal revenue of the United States for said district of Washington, and resides in Tacoma, Pierce County, Washington, which is in the said collection district of the United States known as the district of Washington.

C. King County and Pierce County, Washington, are both in the district for the collection of internal revenue of the United

States known as the district of Washington, and also in the judicial district of the United States known as the western district of Washington, but King County is in the northern division and Pierce County in the southern division of said district.

D. The taxes and interest sued for in this proceeding were
59 paid by the plaintiff to the defendant in his official capacity, and defendant's action in demanding and collecting the same was in accordance with instructions of his superior officers duly appointed, qualified and acting. The defendant, in so demanding and collecting such taxes and interest, had probable cause therefor, and, in the event of a decision in this case adverse to him, he is entitled to a certificate of probable cause.

E. The plaintiff and his wife, Charlotte A. Seaborn, were married on December 11, 1902, and since said time have continuously maintained the marriage relation; have ever since resided in the State of Washington and the said Charlotte A. Seaborn has been throughout such period and is now a citizen of said State.

F. Neither the plaintiff nor his said wife, at the time of their marriage, had any property, or pecuniary rights and neither of them has since acquired any property or pecuniary rights by gift, bequest, devise, descent, or inheritance.

G. Plaintiff and his said wife, during and prior to the year 1927, accumulated a considerable amount of property in the State of Washington, consisting of real estate situated in said State, and of stocks, bonds, moneys and other personal property, all of which was and is the community property of the plaintiff and his said wife under the laws of the State of Washington. The said stocks, bonds, moneys, and other personal property stood, during the period of ownership, in the name of the plaintiff. The record title (as re-
ferred to in secs. 10577 and 10578 Rem. Comp. Stat. of
60 Washington, 1922) to said real estate stood, during the period of ownership, in the name of the plaintiff, with no notice of claim of community interest filed of record, as permitted by sec. 10578 of Rem. Comp. Stat. of Washington, 1922. The income set forth in subdivisions 2, 3, 4, 5, and 6 of paragraph H next following was derived during the year 1927 from the said property hereinabove mentioned in this paragraph G.

H. The entire income in and for the year 1927 of plaintiff and/or wife and/or of the community, which was all of the income which was, under the revenue laws of the United States, required to be included in and returned as gross income, was as follows:

1. Salary of plaintiff for the year 1927 as an officer and employee of the Skinner & Eddy Corporation, a Washington corporation	$15,000.00
2. Interest on bank deposits, notes, and corporation bonds	12,881.06
3. Dividends on stock of domestic corporations	8,834.57
4. Profit from sale of real estate, stocks, and bonds	606.59
5. Profit on sale of boat "Sea Gypsy"	500.00
6. Profit on Cities Service joint venture	625.95
Total	38,448.17

None of the aforesaid income was rents, issues, or profits from property or pecuniary rights owned by the husband before marriage or acquired by him afterwards by gift, bequest, devise,
61 or descent or from property or pecuniary rights of the wife at the time of her marriage or afterwards acquired by gift, devise, or inheritance.

I. The plaintiff paid from the community funds for the year 1927, the following sums, which constitute allowable and proper deductions from gross income in the calculation of net income under the revenue act of 1926:

Interest paid	$9,097.51
Taxes paid	782.26
Charitable contributions	1,716.68
Earnest money forfeited	250.00
Bad debt allowance	325.00
Total allowable deductions	12,171.45

J. The plaintiff and his wife each filed with the defendant herein, within the time required by law, income-tax returns for the year 1927, and made a faithful and bona fide attempt to report their said income and pay the income-tax liability therein as required by the revenue act of 1926. The defendant was the proper collector with whom the same should be filed. The returns were on Form 1040, furnished to taxpayers by the Bureau of Internal Revenue. Copies of the returns filed by the plaintiff and by his wife are hereto attached and made a part hereof, marked, respectively, Exhibits A and B. In each return there was included, under proper headings, one-half of the income above described, from which there was subtracted one-half of the deductions above itemized, leaving on each return
62 a balance of $13,138.36 as their respective net incomes before deducting personal exemption and earned income credit. The tax liability of the plaintiff upon the income so reported by him, at the rates provided by the revenue act of 1926, after giving effect to plaintiff's claim of personal exemption in the sum of $1,750.00 and plaintiff's claim to earned income in the sum of $7,500.00, was $152.38, which plaintiff paid in full at the time required by law; and the tax liability of plaintiff's said wife upon the income so reported by her, at the rates provided by the revenue act of 1926, after giving effect to said wife's claim of personal exemption in the sum of $1,750.00, and her claim to earned income in the sum of $5,000.00, was the sum of $168.32, which said wife paid to the defendant at the time required by law. All of said income so reported by the plaintiff and his said wife in the year 1927 was their community income under the laws of the State of Washington. If plaintiff and his wife were entitled to divide income, less deductions, exemptions, and credits as above described, the plaintiff's return was correct and the tax liability of the plaintiff thereon was as stated on his return.

K. Upon auditing the aforesaid tax return of the plaintiff, the Commissioner of Internal Revenue determined that said return of the plaintiff was incorrect in that, according to the determination of

the commissioner, the plaintiff should have reported all of said income and claimed all of said deductions, and the tax should have been computed and paid at the rates provided in the revenue act of 1926, upon a net income of $26,276.72, less the personal exemption and earned income credit provided by law, instead of upon two net incomes of one-half of said sum. Under such a theory the tax liability of the plaintiff for 1927 would be $703.01 in addition to the amount shown on said return, or a total of $855.39. Thereupon the Commissioner of Internal Revenue notified plaintiff of this determination in accordance with the provisions of section 274 of the revenue act of 1926, and afforded the plaintiff an opportunity to appeal from this determination to the United States Board of Tax Appeals. The plaintiff waived this right, without prejudice to the right to test the matter in the courts, and the commissioner thereupon assessed against the plaintiff, on the 23rd day of August, 1928, said additional sum of $703.01 as a deficiency in income tax due by him for the year 1927, and interest in the sum of $17.92, or a total of $720.93. Said assessment was certified to the defendant, who, on the 23rd day of August, 1928, made formal notice and demand upon the plaintitff for the payment of the same.

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L. The plaintiff thereafter, on the 23rd day of August, 1928, paid to the defendant the sum so demanded of him, and at the time of said payment protested, in writing, against the collection of said sum, notifying the defendant that the same was paid only to avoid the imposition of penalties, additional interest, and seizure and sale of property which would ensue if the demand had not been complied with.

M. On the 23rd day of August, 1928, the plaintiff filed with the defendant a claim for the refunding of said sum, a copy of which is hereto attached, made part hereof, and marked Exhibit C, which claim was rejected by the Commissioner of Internal Revenue on the 24th day of August, 1928, whereupon this suit was instituted.

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N. The plaintiff has complied with all of the conditions precedent and other formal requirements of the statutes and rules relating to his right to institute and prosecute this suit in the manner and upon the grounds alleged in his pleadings, and all informalities have been waived. The defendant and other officers of the United States have complied with all formal requirements of the statutes and regulations in making the deficiency assessments, in collecting the same, and in rejecting plaintiff's claim for the refund.

III

Subject to the right of either party to object to the consideration of the same, as irrelevant or immaterial and without limitation upon the power of the court to take judicial notice, it is further agreed that the records of the Congress of the United States disclose the following proceedings:

A–1. The revenue act of 1921, as introduced into the House of Representatives, as reported by the Ways and Means Committee of the House, and as passed by the House, contained the following clause:

"Income received by any community shall be included in the gross income of the spouse having management and control of the community property."

2. The revenue act of 1921, as reported by the Finance Committee of the Senate, substituted for the above-quoted clause the following:

"Income received by any marital community shall be in-
65 cluded in the gross income of the spouse having the management and control of the community property, and shall be taxed as the income of such spouse."

3. The Finance Committee, in making its report to the Senate, discussed the foregoing provisions as follows, at page 14 of the report:

"Under an opinion of the Attorney General residents of States having a community property law enjoy marked advantage over residents of other States. Income, which in other States is taxed as a unit to the husband, is divided between husband and wife in States having community property laws, and surtaxes are correspondingly reduced. An amendment is added to this section designed to restore uniformity of treatment by providing that income received by any marital community shall be included in the gross income of the spouse having the management and control of the community property, and shall be taxed as the income of such spouse."

4. The bill, as passed by the Senate, eliminated the clause above quoted and as finally enacted contained no specific reference to community income.

B–1. Committee print No. 1 of the revenue act of 1924, as introduced into the Sixty-eighth Congress and filed on December 17, 1923, was entitled as follows:

"The revenue act of 1924, containing proposed amendments to the existing law suggested by the Secretary of the Treasury."
66 and at page 58 of the bill there was included, described as new matter, the following provision:

"Income received by any marital community shall be included in the gross income of the spouse having the management and control of the community property, and shall be taxed as the income of such spouse."

2. The bill, as reported by the Ways and Means Committee of the House of Representatives, eliminated the foregoing clause and contained no reference to community income.

C–1. While the Senate was considering the revenue act of 1926, the following amendment to page 12 of the bill was offered by Senator Wesley M. Jones, of the State of Washington:

"The liability of any taxpayer under any internal revenue law shall be determined, unless such taxpayer otherwise consents or re-

quests, in accordance with the Treasury Decisions, opinions of the Attorney General, and regulations made by the Commissioner or the Secretary, or by the commissioner with the approval of the Secretary, in force at the time his return was made, whether such return was made before or after the enactment of this act. As used in this subdivision, the term 'return' means, in the case of a return which has been amended, the return as finally amended."

2. On February 12, 1926, the Senate, without a record vote, adopted the foregoing amendment, the same appearing in the bill as
67 adopted by the Senate as section 1213. In conference there was substituted for this provision a clause in the language of and which became section 1212 of the revenue act of 1926.

IV

Upon the trial of this cause either party hereto may offer any such additional evidence as may be considered by such party to be pertinent, subject to all legal objections on the part of the other.

V

This agreement and stipulation shall, upon its execution, be filed in this cause and become a part of the record therein.

In witness whereof, the attorneys of record of the respective parties have executed this agreement the ——— day of November, 1928.

GEORGE DONWORTH.
ELMER E. TODD.
FRANK E. HOLMAN,
DONWORTH, TODD & HOLMAN,
Attorneys for Plaintiff.
ANTHONY SAVAGE, *U. S. Atty.*,
JOHN T. MCCUTCHEON,
Asst. U. S. Atty.,
Attorneys for Defendant.
GEORGE G. WITTER,
Special Attorney, Bureau of Internal Revenue,
Attorney for Defendant.

Here follow Exhibits A, B, and C set forth on pages 49–55.

68 [File indorsement omitted.]

Bill of exceptions as settled indorsed: Filed in the United States District Court, Western District of Washington, Southern Division, July 15, 1929.

ED. M. LAKIN, *Clerk.*
By T. W. EGGER, *Deputy.*

In United States District Court

Præcipe for transcript of record filed July 15, 1929

To the CLERK OF THE ABOVE-ENTITLED COURT:

You will please send to the United States Circuit Court of Appeals papers and record on appeal, as below enumerated:

1. Complaint.
2. Answer.
3. Memorandum decision by Judge Cushman.
4. Judgment.
5. Court's findings of fact and conclusions of law with defendant's exceptions thereto.
6. Defendant's requested conclusions of law, with defendant's exceptions thereto.
7. Stipulation and agreed statement of facts.
8. Defendant's bill of exceptions.
9. Assignments of error.
10. Petition for appeal.

69 11. All exhibits. (Clerk's note: No exhibits other than those attached to findings and conclusions and to the agreed statement of facts.)

12. Notice of appeal.
13. Order allowing appeal.
14. Citation on appeal.
15. This præcipe.

ANTHONY SAVAGE,
United States Attorney.
JOHN T. MCCUTCHEON,
Ass't United States Attorney.
GEORGE G. WITTER,
Special Attorney Int. Revenue.
T. H. LEWIS,
Special Attorney Int. Revenue.

Received a copy of the above præcipe this 15th day of July, 1929.

GEORGE DONWORTH,
Of Attorneys for Plaintiff.

[Clerk's certificate to foregoing transcript omitted in printing.]

71 [Citation in usual form showing service on George Donworth, filed July 15, 1929, omitted in printing.]

72 In United States District Court

Stipulation concerning printing of certain exhibits

It is hereby stipulated by and between the parties in the above-entitled cause that

Whereas there are three exhibits, namely, Exhibit A, Exhibit B, and Exhibit C, appearing twice in the transcript of record herein,

namely, as exhibits to the agreed statement of facts and again as exhibits to the special findings of fact made by the court; and

73 Whereas the printed record would be simplified by having said exhibits printed but once in said printed record,

Now, therefore, it is hereby stipulated that said Exhibit A, Exhibit B ,and Exhibit C be printed but once in the record to be printed in this cause and that in the place in said printed record where said exhibits are omitted, suitable reference be made to the place where they are found in said printed record.

ANTHONY SAVAGE,
United States Attorney.
JEFFREY HEIMAN,
Ass't United States Attorney,
Attorneys for Appellant.
GEORGE DONWORTH,
FRANK E. HOLMAN,
Attorneys for Appellee.

It is so ordered:

CURTIS D. WILBUR,
U. S. Circuit Judge.

74 United States Circuit Court of Appeals for the Ninth Circuit

75 *Order of submission, October 21, 1929*

Ordered appeal in above cause argued by Mr. T. H. Lewis, jr., special attorney, Bureau of Internal Revenue, counsel for the appellant, and by Mr. George Donworth, counsel for the appellee, and submitted to the court for consideration and decision, with leave to file brief of Monte M. Lemann and Charles E. Dunbar, jr., as amici curiæ on behalf of Louisiana taxpayers, and supplemental memorandum submitted by appellee concerning section 1212 of the revenue act of 1926.

76 In United States Circuit Court of Appeals, Ninth Circuit

No. 5885

BURNS POE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF Washington, appellant

vs.

H. G. SEABORN, APPELLEE

Order directing filing of certificate certifying certain questions or propositions of law to the Supreme Court of the United States.

NOV. 18, 1929

By direction of the Honorable Frank H. Rudkin, Frank S. Dietrich, and Curtis D. Wilbur, Circuit Judges, before whom the cause was heard, ordered: Certificate certifying certain questions or propo-

sitions of law to the Supreme Court of the United States under section 239 of the Judicial Code be filed, and that a certified copy of said certificate be forthwith forwarded by the clerk of this court to the clerk of the Supreme Court of the United States.

77 [Certificate to U. S. Supreme Court omitted in printing, as it appears under separate cover.]

81 [Clerk's certificate to foregoing transcript omitted in printing.]

82 In Supreme Court of the United States

Order granting motion to bring up entire record and cause

May 26, 1930

On consideration of the joint motion for a writ of certiorari to bring up the entire record and cause,

It is now here ordered by this court that the said motion be, and the same is hereby, granted.

[Indorsement on cover:] File No. 34623. Supreme Court U. S., October term, 1929. Term No. 492. Burns Poe, Collector, vs. H. G. Seaborn. Certified copy of transcript of record. Filed May 19, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930